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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,926	06/26/2001	Yasuhiro Ogata	29288.1400	3852
20222 7590 11/27/2009 SNELL & WILMER L.L.P. (Main) 400 EAST VAN BUREN ONE ARIZONA CENTER PHOENIX, AZ 85004-2202				
EXAMINER				
SHIBRU, HELEN				
ART UNIT		PAPER NUMBER		
2621				
MAIL DATE		DELIVERY MODE		
11/27/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/892,926

**Applicant(s)**

OGATA ET AL.

**Examiner**

HELEN SHIBRU

**Art Unit**

2621

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other \_\_\_\_\_
- 7) ☐ Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. The amendment, filed on 07/24/2009, have been entered and made of record. Based on Applicant's amendment restriction requirement has been made. See below.

***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 16-23, drawn to an audio processing apparatus comprising "... an operation detecting section for detection an operation of a user, wherein when switching a sound to be output from the speaker from a sound based on the third audio signal to a sound based on the second audio signal, the output control section completes an output of the sound based on the third audio signal when an operation of the user is detected by the operation detecting section while the sound based on the third audio signal is being output, transfers to a mute state, and the output control section transfers from the mute state and starts an output of the sound based on the second audio signal when the operation of the user is detected by the operation detecting section subsequent to the mute state," classified in class 386, subclass 95.
  - II. Claim 24, drawn to an audio processing apparatus comprising "... , when switching a sound to be output from the speaker from a sound based on the third audio signal to a sound based on the second audio signal, if the second source is a reproduction-only medium, the output control section

completes an output of the sound based on the third audio signal, passes through a mute state, and subsequently starts an output of the sound based on the second audio signal, else, if the second source is not the reproduction-only medium, the output control section completes an output of the sound based on the third audio signal and starts an output of the sound based on the second audio signal without passing through the mute state," classified in class 386, subclass 125.

3. The inventions are distinct, each from the other because of the following reasons:

groups I-II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case the audio processing apparatus of group I does not require the feature of "when switching a sound to be output from the speaker from a sound based on the third audio signal to a sound based on the second audio signal, if the second source is a reproduction-only medium, the output control section completes an output of the sound based on the third audio signal, passes through a mute state, and subsequently starts an output of the sound based on the second audio signal, else, if the second source is not the reproduction-only medium, the output control section completes an output of the sound based on the third audio signal and starts an output of the sound based on the second audio signal without passing through the mute state" as claimed in group II claim. Similarly the audio processing apparatus of group II does not require the feature of "an operation detecting

section for detection an operation of a user, wherein when switching a sound to be output from the speaker from a sound based on the third audio signal to a sound based on the second audio signal, the output control section completes an output of the sound based on the third audio signal when an operation of the user is detected by the operation detecting section while the sound based on the third audio signal is being output, transfers to a mute state, and the output control section transfers from the mute state and starts an output of the sound based on the second audio signal when the operation of the user is detected by the operation detecting section subsequent to the mute state" as claimed in group I claims.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).
6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HELEN SHIBRU whose telephone number is (571)272-7329. The examiner can normally be reached on M-F, 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THAI Q. TRAN can be reached on (571) 272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HELEN SHIBRU/  
Examiner, Art Unit 2621  
November 09, 2009

/Thai Tran/

Supervisory Patent Examiner, Art Unit 2621